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SUSAN G. LICHTENFELD

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PARK AVENUE TOWER
65 EAST 55TH STREET
NEW YORK, NEW YORK 10022-3219
212-421-5555

580 HOWARD AVENUE
SOMERSET, NEW JERSEY 08873
908-563-2700

888 SIXTEENTH STREET, N.W.
WASHINGTON, D.C. 20006-4103
202-296-8600

March 29, 1994

RECORDATION NO. 18748
MAR 30 1994 - 10 50 AM
INTERSTATE COMMERCE COMMISSION

Via Federal Express

Mr. Sidney L. Strickland, Jr.
Secretary
Interstate Commerce Commission
12th Street and Constitution Avenues
Washington, D.C. 20423

Attention: Mrs. Mildred Lee, Room 2303

Dear Mr. Strickland:

Enclosed for recordation pursuant to the provisions of 48 U.S.C. Section 11303(a) are one original executed copy and three photostatic copies of an Interim User Agreement (the "Agreement"), dated as of March 21, 1994, a primary document as defined in the Commissioner's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed Agreement are:

Owner: Johnstown America Corporation
17 Johns Street
Johnstown, PA 15901

User: Northern Indiana Public Service Company
801 East 86th Avenue
Merrillville, Indiana 46410

A description of the railroad equipment covered by the enclosed document is set forth in the Agreement.

03/29/94
RHCH27:SLICHTE
53410-1.LTR

Interstate Commerce Commission
Washington, D.C. 20423

3/30/94

OFFICE OF THE SECRETARY

Susan G Lichtenfeld

Ross & Hardies

150 North Michigan Avenue

Chicago, Illinois 60606- 7567

Dear sir:

The enclosed document(s) was recorded pursuant to the provisions
of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303,

on 3/30/94 at 10:50am , and assigned
recordation number(s). 18748

Sincerely yours,

Secretary
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

RECORDATION NO. **18748** FILED 1425

MAR 30 1994 - 11 50 AM

INTERSTATE COMMERCE COMMISSION

INTERIM USER AGREEMENT

Dated as of March 21, 1994

between

JOHNSTOWN AMERICA CORPORATION,

and

NORTHERN INDIANA PUBLIC SERVICE COMPANY

380 Aluminum BethGon Coalporter Railcars

INTERIM USER AGREEMENT

THIS AGREEMENT, dated as of March 21, 1994, by and between JOHNSTOWN AMERICA CORPORATION, a Delaware corporation (the "Johnstown") and NORTHERN INDIANA PUBLIC SERVICE COMPANY, an Indiana corporation ("NIPSCO").

W I T N E S S E T H:

WHEREAS, NIPSCO desires to acquire the use of 380 aluminum BethGon Coalporter railcars, to bear railroad road marks and numbers NORX 2811 through 3190, both inclusive, (collectively the "BethGons" and individually a "BethGon");

WHEREAS, NIPSCO and Johnstown have contracted for the purchase and sale of the BethGons pursuant to NIPSCO's Request No. FS-TM-01-93 dated December 6, 1993, Johnstown's Bid dated December 27, 1993, Johnstown's letter dated February 11, 1994 and NIPSCO's letter dated March 1, 1994 (the "Purchase Order");

WHEREAS, NIPSCO is obtaining commitments to finance the purchase of the BethGons pursuant to one or more permanent forms of financing (the "Financing") and anticipates a closing date on or about July 1, 1994; and

WHEREAS, NIPSCO desires that it be permitted to use the BethGons pending the closing of such Financing, and Johnstown is willing to grant such temporary custody and possession to NIPSCO, solely upon the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises, and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. Subject to the terms and conditions contained herein and in the Purchase Order, Johnstown agrees to deliver physical possession of the BethGons to NIPSCO, FOT Johnstown, Pennsylvania. The rights of NIPSCO hereunder in respect of each BethGon shall commence on the date of acceptance of such BethGon by NIPSCO from Johnstown (the "Acceptance") and, unless sooner terminated pursuant to the provision hereof, shall end on the date of payment of the purchase price of such BethGon by NIPSCO, or by its designee under the Financing (the "Closing"). Whether or not the Financing shall then have occurred, NIPSCO, on September 1, 1994, shall purchase and pay for, in cash, all BethGons previously accepted by NIPSCO and not previously paid for by NIPSCO or its designee, and the obligation of NIPSCO so to do shall be absolute and unconditional, regardless of the

condition of such BethGons or any other event or circumstance. At the Closing with respect to any BethGons, Johnstown shall sell such BethGons to NIPSCO or such purchaser as NIPSCO may provide, at the purchase price of \$43,644.20 per BethGon, plus applicable taxes and other charges, if any, as set forth in the Purchase Order. Nothing in this Agreement shall relieve NIPSCO of its obligation to take, purchase and pay for the BethGons in accordance with the terms of the Purchase Order nor shall it relieve Johnstown of its obligations under the Purchase Order.

2. On Acceptance of any BethGon, NIPSCO shall assume the responsibility and risk of loss with respect to such BethGon and will deliver to Johnstown a Certificate of Acceptance substantially in the form attached hereto as Exhibit A (the "Certificate and Acceptance"). Execution of the Certificate of Acceptance by NIPSCO shall constitute acceptance by NIPSCO of the BethGons identified in the Certificate of Acceptance for all purposes of this Agreement and the Purchase Order. On Acceptance, Johnstown's warranty with respect to such BethGon will commence.

3. Full and complete title to the BethGons shall remain in Johnstown until Closing and NIPSCO's rights and interests therein shall be solely that of temporary possession, custody, and use under this Agreement. Neither NIPSCO nor any person claiming by through or under NIPSCO shall acquire any title to or ownership of the BethGons, or any portion thereof, by virtue of this Agreement or the temporary possession and use of the BethGons by NIPSCO under or pursuant to this Agreement. Transfer of title to any BethGon to NIPSCO or to any purchaser provided by NIPSCO shall be effected only at Closing by delivery by Johnstown of a bill of sale to NIPSCO or to such purchaser; provided, however, that title to different BethGons may be transferred at different times and under separate bills of sale, to the extent that such BethGons shall be subject to different financing arrangements. When the purchase price of any BethGon has been paid in full to Johnstown, together with all other amounts payable to Johnstown hereunder with respect to such BethGon, and Johnstown has delivered an appropriate bill of sale, this Agreement shall automatically be terminated with respect to such BethGon without further action by or notice to any party concerned. Prior to delivery of any BethGon, NIPSCO shall do such acts as may be required by law, or requested by Johnstown, for the protection of Johnstown's title to and interest in the BethGons, including, without limitation, recording, at NIPSCO's expense, a fully signed counterpart of this Agreement with the Interstate Commerce Commission ("ICC"), with the corresponding offices in Canada if any of the BethGons will be used in Canada, and wherever else necessary to protect Johnstown's interest. Upon receipt of all payments required to be made hereunder and under the Purchase Order with respect to any BethGons, Johnstown shall, at the request of NIPSCO, deliver to NIPSCO or its designee a release of

Johnstown's right, title and interest in such BethGons, such release to be in form suitable for filing with the ICC.

4. This Agreement is an arrangement under which NIPSCO will have temporary possession, custody, use and quiet enjoyment of the BethGons to be purchased from Johnstown, and the risk of loss of the BethGons after Acceptance is on NIPSCO. NIPSCO will, at all times while this Agreement is in effect and at its own expense, cause to be carried and maintained in full force and effect in such amounts and with such terms (including co-insurance, deductibles, limits of liability and loss payment provisions) as are in keeping with the terms applicable to other railcars owned or leased by NIPSCO: (i) public liability insurance against loss or damage for personal injury, death or property damage occurring as a result of the ownership, maintenance, use or operation of any BethGon; and (ii) property damage insurance on the BethGons; provided, however, that NIPSCO may self-insure with respect to any or all of the above as is customary under NIPSCO's risk management program; and provided, further, that any such self-insurance will be comparable to self-insurance provisions generally applicable to other comparable equipment owned or leased by NIPSCO. Any liability insurance policies maintained by NIPSCO while this Agreement is in effect shall name Johnstown as an additional insured and NIPSCO agrees to provide Johnstown, upon Johnstown's reasonable request, with such information concerning any insurance policies maintained by NIPSCO as Johnstown may reasonably request.

5. NIPSCO agrees, so long as this Agreement remains in effect, (i) to use the BethGons exclusively in unit train service to deliver coal to or from one of its generating stations and (ii) that none of the BethGons shall be shipped beyond the boundaries of the United States, except with the prior written consent of Johnstown.

6. In addition to any other rights or remedies which Johnstown may then have under law, upon default by NIPSCO in performing any term of this Agreement or the Purchase Order, Johnstown, without demand or notice, may, but shall not be obligated to, terminate this Agreement, and upon such termination, NIPSCO shall, if requested by Johnstown, immediately assemble all of the BethGons, make them available to Johnstown at such place or places as Johnstown may designate and store, protect, maintain and preserve the BethGons pending receipt of further instructions from Johnstown, and shall thereafter transport all or any portion of the BethGons to such place or places as Johnstown shall designate, all at the sole risk and cost of NIPSCO.

7. It is the intent of the parties that Johnstown shall suffer absolutely no loss as a result of this Agreement and NIPSCO agrees that it will permit no liens of any kind to attach

to the BethGons (other than liens created by Johnstown), and that it will (a) indemnify, defend, and save harmless Johnstown from and against all claims, expenses, costs, or liabilities of whatsoever kind or nature arising out of retention by Johnstown of title to the BethGons or out of the temporary possession, use and operation thereof by NIPSCO during the period when title thereto remains in Johnstown, or otherwise out of this Agreement (including without limitation consequential damages and lost profits under the Purchase Order) and (b) pay any and all taxes, (other than income taxes imposed on Johnstown by any foreign, federal, state or local taxing authority and any fines, charges or penalties imposed against Johnstown in connection with any such income taxes), fines, fees, charges, and penalties that may accrue or be assessed or imposed upon the BethGons or Johnstown because of its retention of title to the BethGons or because of any person's use, marking, operation, management or handling of the BethGons after Acceptance and while title to such BethGons remains in Johnstown pursuant to this Agreement. Each party agrees to indemnify and hold harmless the other for any claims or costs imposed on the indemnified party as a result of a breach of this Agreement by the indemnifying party.

8. NIPSCO shall, at its own expense, keep and maintain the BethGons in good order, repair and running condition and will, at its option, repair or replace or promptly pay to Johnstown the purchase price in cash of those BethGons which may be damaged or destroyed by any cause during the term of this Agreement. The design, construction or specifications of any BethGon, or any part thereof, may not be changed without the prior written approval of Johnstown. NIPSCO shall maintain, use and operate the BethGons in compliance with all applicable laws, rules and regulations, including, without limitation, the Interchange Rules of the Association of American Railroads.

9. Prior to the physical delivery of any BethGon to NIPSCO it will be marked and numbered with its appropriate road designation; in addition, there shall be plainly, distinctly, permanently, and conspicuously marked and maintained by NIPSCO upon both sides of each BethGon in letters not less than one inch in height the following words:

Ownership Subject to an Agreement filed with the ICC

No road marks or numbers shall be placed on the BethGons other than those specified in the first "Whereas" clause of this Agreement.

10. On the Closing of any BethGons, in addition to the amounts to be paid to Johnstown for the purchase of such BethGons pursuant to the provisions of Section 1 hereof, NIPSCO agrees to pay Johnstown in United States funds, by wire transfer to an account specified by Johnstown, to compensate Johnstown for its

agreement to allow NIPSCO to take possession of and use such BethGons prior to the Closing, the following:

- (i) \$13.00 per BethGon per day for each day elapsed from the date of Acceptance of such BethGon to the earlier of the Closing or July 31, 1994, plus \$25.00 per BethGon per day for each day elapsed from July 31, 1994 to the Closing; and
- (ii) all reasonable legal expenses incurred by Johnstown in connection with the enforcement of this Agreement, less any amounts previously paid by NIPSCO to Johnstown on account of such expenses.

11. NIPSCO hereby makes the following representations and warranties to Johnstown, the truth and accuracy of which shall be a condition precedent to the obligation of Johnstown to deliver any BethGons to NIPSCO hereunder:

- a. NIPSCO is a corporation, duly organized, validly existing and in good standing under the laws of the State of Indiana, has all requisite power and authority to execute and deliver and to perform its obligations under this Agreement and any related documents delivered by NIPSCO in connection herewith (hereinafter collectively referred to as the "NIPSCO Documents"), to carry on its business as now conducted, and is duly qualified and in good standing in such other jurisdictions in which the failure to so qualify or be in good standing could adversely affect its ability to perform its obligations under the NIPSCO Documents.
- b. The NIPSCO Documents have been duly authorized, executed and delivered by NIPSCO, and assuming the due authorization, execution and delivery of such documents by Johnstown, are legal, valid and binding instruments enforceable against NIPSCO in accordance with their terms, except as enforcement may be limited by general principles of equity or by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to the enforcement of creditors' rights generally.
- c. No authorization or approval from any governmental or public body or authority of the United States of America, or of any of the States thereof or the District of Columbia, is necessary for the execution, delivery and performance by NIPSCO of the NIPSCO Documents.
- d. Neither the execution and delivery of the NIPSCO Documents nor the consummation of the transaction

therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of the organizational documents or the by-laws of NIPSCO, or of any bond, debenture, note, mortgage, indenture, deed of trust, lien, agreement or other instrument to which NIPSCO is a party or by which it or its property may be bound, or constitute (with or without the giving of notice or the passage of time or both) a default thereunder, or result in the creation of any lien on the BethGons (other than any lien in favor of Johnstown) or upon any property of NIPSCO.

- e. Neither the execution and delivery by NIPSCO of the NIPSCO Documents nor the consummation of the transactions therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach or violation of, any of the terms, conditions or provisions of any law, or any regulation, rule, order, award, injunction or decree of any court or governmental instrumentality or arbitrator.

Prior to the delivery of the first BethGon to NIPSCO hereunder, NIPSCO shall deliver an opinion of its in-house counsel to Johnstown with respect to the matters set forth above, such opinion to contain such limitations and qualifications as may be reasonably acceptable to Johnstown.

12. Johnstown shall have the right to assign its rights under this Agreement, provided that Johnstown shall not have the right to assign its obligations arising under the Purchase Order, including, without limitation, its obligation to build and deliver the BethGons.

13. This Agreement shall be interpreted under, and its performance shall be governed by, the laws of the Commonwealth of Pennsylvania without regard to its conflicts of laws doctrine, and the applicable federal laws of the United States of America.

14. This Agreement shall be binding upon, and shall constitute the complete agreement between the parties and their respective successors and assigns, with respect to the subject matter hereof, and may be amended or modified only in a writing lawfully executed by the parties hereto. Any provision of this Agreement determined to be unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof.

15. Any amounts payable to Johnstown hereunder which are not paid when due shall bear interest from the due date thereof until paid at the rate of twelve percent (12%) per annum, but in no event greater than the maximum rate permitted by applicable law.

16. All communications under this Agreement shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail and courier service, (b) five (5) days after the date on which it shall have been mailed by United States mail (by certified mail, postage prepaid, return receipt requested), or (c) in the case of notice by such a telecommunications device, when properly transmitted, addressed to each party at the following addresses or to such other address as the party to whom the same is intended shall specify in conformity with the foregoing:

If to JOHNSTOWN AMERICA CORPORATION
17 Johns Street
Johnstown, Pennsylvania 15901
Attention: Michael Siska
Fax No. (814) 533-5010

With a copy to:

Robert W. Kleinman
Ross & Hardies
150 North Michigan Avenue
Chicago, Illinois 60601
(312) 558-1000
Fax No. (312) 750-8600

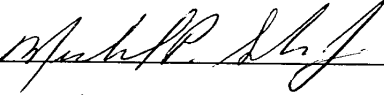
If to NIPSCO:

801 East 86th Avenue
Merrillville, IN 46410
Attention: Charles W. Kern
Fax No. (219) 647-5310

17. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto and have caused this Agreement to be executed by their respective officers thereunder duly authorized as of the day and year first above written.

JOHNSTOWN AMERICA CORPORATION

By 

Name: Michael P. Siska

Its: Director, Marketing & Sales
Administration

NORTHERN INDIANA PUBLIC
SERVICE COMPANY

By _____

Name: _____

Its: _____

IN WITNESS WHEREOF, the parties hereto and have caused this Agreement to be executed by their respective officers thereunder duly authorized as of the day and year first above written.

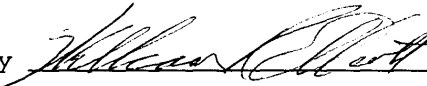
JOHNSTOWN AMERICA CORPORATION

By _____

Name: Michael P. Siska

Its: Director, Marketing & Sales
Administration

NORTHERN INDIANA PUBLIC
SERVICE COMPANY

By 

Name: William R. Elliott

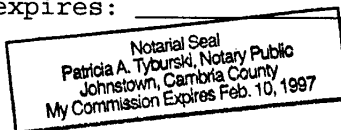
Its: Vice President

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF CAMBRIA)

On this 24th day of March, 1994, before me personally appeared Michael P. Siska, to me personally known, who, being by me duly sworn, says that he is the Director, Marketing & Sales Administration, of JOHNSTOWN AMERICA CORPORATION, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged before me that the execution of the foregoing instrument was the free act and deed of said corporation.

Patricia A. Tyburski
Notary Public

My commission expires: _____



STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

On this 24th day of March, 1994, before me personally appeared W. R. Elliott to me personally known, who, being by me duly sworn, says that he is Vice President of NORTHERN INDIANA PUBLIC SERVICE COMPANY, that said instrument was executed on behalf of said corporation by authority of its Board of Directors, and he acknowledged before me that the execution of the foregoing instrument was the free act and deed of said corporation.

Kathleen G. Falaschetti
Notary Public
Kathleen A. Falaschetti

My commission expires: 2/8/96

EXHIBIT "A"
TO
INTERIM USER AGREEMENT

CERTIFICATE OF ACCEPTANCE

I have been appointed as the duly authorized representative of Northern Indiana Public Service Company ("NIPSCO") for the purpose of inspecting, accepting, and receiving delivery of the units of railroad equipment described below (the "Cars"), which are referred to in the Interim User Agreement dated as of March __, 1994 (the "Agreement"), between Johnstown America Corporation ("Builder") and NIPSCO. Title to the Cars does not pass upon such acceptance, but only passes to NIPSCO or its assigns upon payment of the purchase price therefore and delivery of title to the Cars at the Closing of such Cars, as described in the Agreement. Capitalized terms used herein and not otherwise defined herein shall have the meanings as defined in the Agreement.

I hereby certify that with respect to the Cars:

1. Each Car has been inspected and is in good order.
2. Based on my determination that each Car is in compliance with all applicable specifications, each Car is hereby accepted for all purposes of the Agreement and the Purchase Order.

Type of Equipment:

Aluminum BethGon
Coalporter Cars

Place Accepted:

Johnstown, Pennsylvania

Date Accepted:

Number of Cars:

Reporting Marks:

NORX

Car Numbers

Car Weights

THE UNDERSIGNED further certifies that there was plainly, distinctly, permanently and conspicuously marked in stencil on both sides of each Car the following legend in letters not less than one inch in height:

OWNERSHIP SUBJECT TO AN AGREEMENT FILED WITH THE ICC

Authorized Representative of NIPSCO

Date: _____, 1994

Mr. Sidney L. Strickland, Jr.
March 29, 1994
Page 2

Also enclosed is a check in the amount of \$18.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return the stamped original copy and two stamped photostatic copies of the enclosed document and the stamped photostatic copy of this letter to Susan G. Lichtenfeld at Ross & Hardies, 150 North Michigan Avenue, Suite 2500, Chicago, Illinois 60601.

Following is a short summary of the enclosed document:

Document to be Recorded

Interim User Agreement dated as of March 21, 1994 between Johnstown America Corporation, Owner, and Northern Indiana Public Service Company, User, with respect to that certain Interim User Agreement, dated as of March 21, 1994, relating to the use of 380 BethGon Coalporter railcars.

Very truly yours,


Susan G. Lichtenfeld

SGL:cc
w/encl.

cc: Robert W. Kleinman